APPENDIX

of

Sections of State Constitution and Statutes Involved.

(Emphasis are petitioner's, employed to facilitate reference to particular clauses deemed pertinent.)

CONSTITUTION OF MISSOURI, ARTICLE III.

The Distribution of Powers.

Three departments of government.—The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confined to a separate magistracy, and **no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others,** except in the instances in this Constitution expressly directed or permitted.

Article II, **Sec. 30. Due process of law.**—That no person shall be deprived of life, liberty or property without **due process of law.**

Article II, **Sec. 20. Private property not to be taken for private use—exceptions—public use a judicial question.**—That **no private property can be taken for private use, with or without compensation, unless by the consent of the owner,** except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in such manner as may be prescribed by law, and that whenever an attempt is made to take private property for a use alleged to be public, **the question whether the contemplated use be really public shall be a judicial question, and as such judicially determined,** without regard to any legislative assertion that the use is public.

Article IV, **Sec. 53. Special and local laws prohibited.—The General Assembly shall not pass any local or special laws.**

* * * (32) In all other cases **where a general law can be made applicable,** no local or special law shall be enacted.

Article VI, Amendments 1890, **Sec. 3.** (On Organization of State Supreme Court.) **Business divided, how—practice—opinions—original writs.**—The Supreme Court shall assign to each division the causes and matters to be heard by it, of which assignment due public notice shall be given, and all laws relating to practice in the Supreme Court, as well as the rules of the Supreme Court, shall apply to each division so far as they may be applicable thereto. **The opinion of each division shall be in writing, and shall be filed in the causes in which they shall be respectively made** during the term at which the cause is submitted, and **such opinions shall be a part of the records of the Supreme Court.** Each division shall have authority to issue the original writs and exercise the powers enumerated in section three of article six of the Constitution.

Sec. 4. Case transferred to court in banc, when.—When the judges of a division are equally divided in opinion in a cause, or when a judge of a division dissents from the opinion therein, or **when a federal question is involved, the cause, on the application of the losing party, shall be transferred to the court for its decision**; or when a division in which a cause is pending so shall order, the cause shall be transferred to the court for its decision.

Article VI, Amendment, 1884, Sec. 5, under which **the Supreme Court has exclusive appellate jurisdiction of cases involving constitutional or Federal questions.**

Revised Statutes of Missouri, 1939.

Chap. 79, "Drains, Levees and Water Supply Districts";

Art. 7, "Organization of Levee Districts by Circuit Courts";

Sec. 12532. Plan of drainage may be changed, how.—The board of supervisors for and in behalf of any levee district organized under the provisions of this article, or the owners of land adjacent to such district, **shall have the right to file a petition in the office of the clerk of the court, organizing the district praying the court** to amend its former decree incorporating the district, by correcting the names of landowners, by striking out any such names, by adding, striking out or correcting the descriptions of any lands within or alleged to be within the boundary lines of any such district, or in any other manner amend its decree; **said petition may ask permission of the court for said board to amend or change "the plan for reclamation",** or to correct any errors, omissions or other mistakes that have been discovered in "the plan for reclamation", or said petition may ask that the boundary lines of said district be extended so as to include lands not described by and included in the articles of association filed and the decree of the court incorporating the district. **If such petition asks the court permission to "change the plan for reclamation"** or that the boundary lines of such district be in any manner changed, **it shall also ask the court to appoint three commissioners as provided under the provisions of section 12505 to appraise the land that shall be taken for rights-of-way or other works, or assess the benefits and damages to any or all lands, railroad and other property** already in the district or that may be annexed to the district by the proposed amendments, and changes to "the plan for reclamation" or the proposed change in the boundary lines of said district. After said petition shall have been filed, the court

wherein said petition is filed, if in session, or the clerk thereof in vacation, shall fix the date not less than 45 nor exceeding 60 days from the date of filing said petition, on or before which objections, if any, shall be filed to said petition, and the clerk shall give notice of the filing of said petition and of the date on or before which objections, if any, to said petition shall be filed by causing publication to be made once a week for four consecutive weeks in some newspaper published in each county in which are situate the land and other property affected by the proposed changes, amendments and corrections mentioned in said petition, the first insertion to be made not more than fourteen days after the date on which the petition was filed. Said notice shall be substantially in the following form and it shall be deemed sufficient for all purposes of this article:

(Here follows form of notice.)

Where lands or other property in different counties will be affected by the proposed changes, amendments and corrections enumerated in the said petition, it shall not be necessary to include all the said lands or other property in the notice published in the different counties, but only such of said lands and other property as are situated in the respective counties. Any owner of land or other property that will be affected by the proposed changes, amendments and corrections mentioned in the petition, may on or before the date fixed and published as above provided, file objections in the court or if in vacation thereof, in the office of the clerk of such court wherein the said petition is filed, to the granting of the prayer of the said petition: **Provided,** that the court may in vacation or term time extend the time upon terms. **The court shall hear said petition and all objections that may have been filed against said petition in a summary manner without unnecessary delay, at either a regular, adjourned, special or called term, and enter its decree according to its findings.** The clerk of

said court shall, within fifteen days after the granting of such decree, transmit a certified copy of said decree and a copy of the petition to the secretary of the board of supervisors, who shall transmit a copy of the same to each of the recorders of deeds of the counties having land in the district and to the secretary of state. Each such recorder shall file and preserve the same in his office, and for such filing and preserving he shall receive a fee of one dollar. **If said decree of the court provides that "the plan for reclamation" may be amended, changed or corrected,** or the boundary lines of the district extended, **the court shall appoint three commissioners, possessing the same qualifications as the commissioners appointed under the provisions of section 12505 of this article, to appraise property to be taken, assess benefits and damages and estimate the cost of improvements the same as is required of commissioners acting under the provisions of section 12507 of this article. Said commissioners shall make their report in writing and file the same with the circuit clerk, after which the case shall be proceeded with in the same manner as is now provided for in the previous sections of this article for the organization of levee districts: Provided,** that if the petition be dismissed the district shall pay the cost, but if the petition be sustained in whole or in part, the objectors shall pay the court costs. **In case the benefits and damages have been assessed on the land and other property remaining in the district and the court finds the same will not be altered by** either the change in the boundary line or **change in "the plan for reclamation", the court shall not appoint commissioners to make assessments.**

Chap. 6, "Civil Procedure—General Code"; Art. 5, "Pleadings"; **Sec. 916. The petition is the first pleading—what it shall contain.**—The first pleading on the part of the plaintiff is the petition, which shall contain: First, the title of the cause, specifying the term, the name of the court

and county in which the action is brought, and the names of the parties to the action, plaintiffs and defendants; second, **a plain and concise statement of the facts constituting a cause of action**, without unnecessary repetition; third, **a demand of the relief to which the plaintiff may suppose himself entitled.** If the recovery of money be demanded, the amount thereof shall be stated, or such facts as will enable the defendant and the court to ascertain the amount demanded.

Sec. 920. The defendant may answer or demur.—The only pleading on the part of the defendant is either a **demurrer** or an **answer.**

Art. 6, "Amendment of Pleadings and Sundry Proceedings." **Sec. 969. Variance, when deemed material.**—No variance between the allegation in the pleading and the proof shall be deemed material, unless it has actually misled the adverse party, to his prejudice, in maintaining his action or defense upon the merits; when it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, by affidavit showing in what respect he has been misled, and thereupon the court may order the pleading to be amended upon such terms as shall be just.

Art. 16, "New Trials, Arrest of Judgment and Bills of Exceptions. **Sec. 1167. Failure of proof—verdict—when set aside.—Where the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance, but a failure of proof.** In case of such failure of proof, and a verdict of a jury or finding of the court against the party so failing, and the court is satisfied, from the proof given, that the party has a good cause of action or defense, the court may on motion of such party, set aside the verdict

or finding, and grant a new trial, and permit the pleadings to be amended on such terms as may be just.

Art. 6, "Amendment of Pleadings and Sundry Proceedings." **Sec. 970. Variance not material, proceedings.—When the variance** between the allegation in the pleading and the proof **is not material, the court may direct the facts to be found according to the evidence,** or may order an immediate amendment without costs.

Sec. 971. Amendment before final judgment.—The court may, at any time before final judgment, in furtherance of justice, and on such terms as may be proper, **amend any** record, **pleading,** process, entry, return or other proceedings, **by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or when the amendment does not change substantially the claim** or defense, **by conforming the pleading or proceeding to the facts proved.**

Sec. 982. Amended pleadings may be answered.—If any amendment be made to any pleading, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer or reply to the pleading so amended.

Sec. 987. This article to extend to what actions.—The provisions of this article shall extend to all actions, including all suits for the recovery of any debt due to this state, or for any debt, duty or revenue belonging to this state, and also to all actions for penalties, to all writs of *mandamus* and prohibition, to informations in the nature of a *quo warranto*, to writs of *scire facias* and to the proceedings thereon, but shall not extend to indictments or informations for any criminal matter, or to the proceedings thereon.

Sec. 988. Duty of court in construing this law.—It shall be the duty of the courts to so construe the provisions of law relating to pleading, and to so adapt the practice thereunder as to discourage, as far as possible, negligence and **deceit,** to prevent delay, **to secure parties from being misled, to place the party not in fault as nearly as possible in the same condition he would be in if no mistake had been made, to distinguish between form and substance, and to afford known, fixed and certain requisites in place of the discretion of the court or judge thereof.**

Revised Statutes Missouri, 1939, Chapter 79, "Drains, Levees and Water Supply Districts," Article VII, "Organization of Levee Districts by Circuit Courts" (Sections 12492-12547).

Sec. 12492 (10902). Levee districts, how organized.—The owners of a majority of the acreage in any contiguous body of swamp, wet or overflowed land or other property in the nature of individual or corporate franchises in this state, **or land subject to overflow, wash or bank erosion,** situate in one or more counties in this state **may form a levee district for the purpose of having such land and other property reclaimed and protected from the effects of overflow and other water,** for sanitary or agricultural purposes, **or from the effect of wash or bank erosion,** or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, **by levee, or otherwise, and for that purpose they may make and sign articles of association** in which shall be stated: The name of the district, and the number of years the same is to continue; the boundary lines of the proposed levee district; the names of the owners of land or other individual or corporate franchise property in said district, together with a description of the land and other such property owned by each; when the name of the owner of any of said lands or other prop-

erty is unknown, this fact shall be set out in said articles; said articles shall further state that the owners of real estate and other such property within said district whose names are subscribed to said articles are willing to and do obligate themselves to pay the tax or taxes which may be assessed against their respective lands or other property to pay the expense of organizing, and of making and maintaining the improvements that may be necessary to effect the reclamation or protection of said lands or other such property, so formed into a levee district, and to reclaim and to protect the same from the effects of overflow and other water, or from bank erosion or wash, and **said articles of association shall contain a petition praying that the lands and other property described therein be declared a levee district under the provisions of this law.** After said articles of association and petition have been so signed the same shall be filed in the office of the circuit clerk of the county in which such lands and other property are situate; or, if such lands and other property be composed of tracts or parcels situate in two or more different counties then in the office of the clerk of the circuit court of the county in which there are situate more of said lands and other property than in any other county; **Provided,** that in the event any work is to be done upon any navigable stream, the consent of the federal government shall be obtained to make such improvement or improvements before the actual work on the improvement shall be begun.

Sec. 12493 (10903). Defining and construing terms and provisions of this article.

Sec. 12494 (10904). Circuit clerk shall give notice by publication of application to form drainage district—form of notice.

Sec. 12495 (10905). Objections—procedure.—Any owner of real estate or other property as herein described, in said

proposed district, who may not have signed said articles of association, objecting to the organization and incorporation of said levee district may, within forty-five days after the date on which said articles of association and petition were filed, file his objection or objections why such levee district should not be organized and incorporated. Such objection or objections shall be limited to a denial of the statements in the articles of association, and shall be heard by the court in a summary manner, without unnecessary delay, **and in case all such objections are overruled, the circuit court shall, by its order duly entered of record, duly declare and decree said levee district a public corporation of this state,** for a term not exceeding the time mentioned in said articles of association signed and filed. If the court finds that the lands set out in said articles of association should not be incorporated into a levee district, it shall dismiss said proceedings and adjudge the costs against the signers of said articles of association in proportion to the acreage represented by each. Any person having signed the articles of association shall have no right to have said proceedings dismissed as to him without the written consent of the majority in acreage of the owners who signed said articles. The articles of association and petition may be amended as any other pleading. Within sixty days after the said district has been declared a corporation by the court, the clerk shall thereafter transmit to the secretary of state a certified copy of the findings and decree of the court incorporating said district, and the same shall be filed in the office of the secretary of state in the same manner as articles of incorporation are now required to be filed under the general law concerning corporations. A copy of said findings and decree, together with a plat of the district, shall also be filed in the office of the county recorder in each of the counties having land in said district, where the same shall become a permanent record,

and each such recorder shall receive a fee of one dollar ($1.00) for filing and preserving the same.

Sec. 12496 (10906). Board of supervisors—how elected—term of office—* * * "at such election each and every acre of land and each and every mile of right of way of every corporation owning a franchise in the district **shall represent one share" and be entitled to one vote for each share.**

Sec. 12497 (10907). Board of supervisors—vacancy declared, when—vacancy filed, how.

Sec. 12498 (10908). Article, how construed—existing rights not to be affected by this article.

Sec. 12499 (10909). Annual election—who entitled to vote. * * * Provided, that **after the report of the commissioner has been confirmed by the court under the provisions of section 12509 only the land and other such property having benefits assessed against it shall be entitled to vote** at the annual meetings held under the provisions of this section.

Sec. 12500 (10910). Supervisors to take oath.

Sec. 12501 (10911). Organization of board—to make annual report—compensation.

Sec. 12502 (10912). Board to appoint chief engineer and assistants—their duties.—Within sixty days after organizing the board of supervisors shall appoint a competent civil engineer as chief engineer, who may be an individual, copartnership or corporation, and who shall engage such assistants as the board of supervisors may approve. The chief engineer shall have control of the engineering work in said district. The chief engineer may, by and with the consent of the board of supervisors, consult any eminent engineer or engineers and obtain his or their opinion and advice concerning the reclamation or protection of land in said district. **The said engineer or engineers shall make all**

necessary surveys of the lands within the boundary lines of said district, as described by the articles of association, and of all lands adjacent thereto that may or will be improved or reclaimed in part or in whole by any system of levees or bank protection that may be outlined and adopted, and said engineer or engineers shall make a report in writing to the board of supervisors with maps and profiles of said surveys, which report shall contain a plan for leveeing, draining, reclaiming or protecting the lands and property described in the articles of association or adjacent thereto from overflow of or damage by water.

Sec. 12503 (10913). Chief engineer to make report—when—plan for reclamation, how adopted.—The chief engineer shall make a report in writing to the board of supervisors when said board shall so require it. Upon receipt of the final report of said engineer concerning surveys made of the lands and other property contained in the district organized, and plans for reclaiming or protecting the same the board of supervisors shall adopt such report or any modification thereof approved by the chief engineer after consulting with him or some one representing him, and thereafter such adopted report shall be the plan for leveeing, protecting or reclaiming such lands and other property from overflow or damage by water, and it shall after such adoption be known and designated as "the plan for reclamation," which term shall include leveeing, diking, bank protection, current control or other improvement, which plan shall be filed with the secretary of the board of supervisors and by him copied into the records of the district.

Sec. 12504 (10914). Levy of tax to pay cost of organization—when payable—how used.

Sec. 12505 (10915). Secretary of board to file copy of plan with circuit clerk—duty of board—commissioners, how

appointed.—Within twenty days after the adoption of "the plan for reclamation" the secretary of the board of supervisors shall prepare and transmit a certified copy thereof to the circuit clerk of the court organizing said levee district, and at the same time **the board of supervisors shall file with said circuit clerk a petition asking the judge of said court to appoint commissioners to appraise the lands within and without said district to be acquired for rights of way, holding basins and other works of the district and to assess benefits and damages accruing to all lands in the district and other property by reason of the execution of "the plan for reclamation".** Within thirty days after the filing of such petition the judge of said court, either in term time or vacation, shall, by an order, appoint three commissioners, who shall be freeholders residing within the state of Missouri, and who shall not be landowners in said district nor of kin within the fourth degree of consanguinity to any person owning land in said district. A majority of said commissioners shall constitute a quorum and shall control the action of the board on all questions.

Sec. 12506 (10916). Organization of board of commissioners.—Said circuit clerk upon the filing of said order of appointment shall notify each of said commissioners of his appointment by written or printed notice, and in the same notice he shall state the time and place for the first meeting of said commissioners. **The secretary of the board of supervisors or his deputy shall attend such meeting, and shall furnish to said commissioners a complete list of lands, all corporate and other property described in the articles of association or adjacent thereto that will be affected by carrying out and putting into force "the plan for reclamation"**, and the names of the owners of such property, as were contained in the articles of association, at the date of the final decree of the court incorporating the district. Said secretary shall also furnish said commissioners a

copy of "the plan for reclamation" mith maps and profiles in his office. The commissioners at said meeting, or within ten days thereafter, shall each take and subscribe to an oath that they will faithfully and impartially discharge their duties as such commissioners and make a true report of the work done by them. The said commissioners shall also at said meeting elect one of their own number chairman, and the secretary of the board of supervisors, or his deputy, shall be ex officio secretary of said board of commissioners during their continuance in office.

Sec. 12507 (10917). Commissioners to inspect districts and assess benefits and damages—to file report.—Within thirty days after qualifying, as provided for in the previous section, the commissioners shall begin their duties; they may at any time call upon the attorney of the district for legal advice and information relative to their duties, and **the chief engineer or one of his assistants shall accompany said commissioners at all times and shall render his opinion in writing when called for. Said commissioners** shall proceed to view the premises and **determine the value of all land and other property, within or without the district, to be acquired and used for rights-of-way, or other works set out in "the plan for reclamation"; they shall assess the amount of benefits, and the amount of damages, if any, that will accrue to each governmental lot, forty acre tract or other subdivision of land** according to ownership, railroad and other rights of way, railroad roadways and other property **from carrying out and putting into effect "the plan for reclamation" heretofore adopted.** The commissioners **in assessing the benefits to lands,** public highways, railroad and other rights of way, railroad roadways and other property not traversed by such works and improvements as provided for in "the plan for reclamation", **shall not consider what benefits will be derived by such property after other levees, ditches, improvements or**

other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in "the plan for reclamation", or as the same may afford protection from overflow of such property. The commissioners shall give due consideration and credit to any other levee, ditch or other systems of reclamations which may have already been constructed and which afford partial or complete protection to any tract or parcel of land in the new district, and if the commissioners shall find that any levee or other works have been constructed under any general or special law of this state, which can be used in making the levees and improvements herein contemplated, they shall include the same in their report, and thereafter the said board of supervisors may order such levees or such works to be used, so far as they extend, for the purpose of the levee district in which they are situated, and that the district or other owners of such levee or other improvements or persons having an interest in same by virtue of having contributed money, material or labor in the construction of the same, shall be allowed in proportion to the interest held or owned in said levees or improvements, a compensation which shall not exceed the amount of such levee district's indebtedness as evidenced by outstanding scrip, bonds or other evidences of indebtedness. The railroad and other rights of way, railroad and other property shall be assessed according to the increased physical efficiency and decreased maintenance cost by reason of the protection to be derived from the proposed works and improvements. **The commissioners shall have no power to change "the plan for reclamation" heretofore provided for. The board of commissioners shall prepare a report of their findings, which shall be arranged in tabular form,** the columns of which shall be headed as follows: Column one, "owner of property assessed"; column

two, "description of property assessed"; column three, "number of acres assessed"; column four, "amount of benefits assessed"; column five, "number acres taken for right of way"; column six, "value of property taken"; column seven, "damages". **They shall also, by and with the advice of the engineer of the district, estimate the cost of works set out in "the plan for reclamation"**, which estimate shall include the cost of property required for rights of way and damages and the actual expenses of organization and administration, as estimated by the board of supervisors, and shall itemize and tabulate the same. Said report shall be signed by at least a majority of the commissioners and filed in the office of the circuit clerk, in which the articles of association were filed. **The secretary of the board of supervisors, or his deputy, shall accompany said commissioners while engaged in their duties, and shall perform all clerical work of said board; he shall also under the advice, supervision and direction of the attorney for the district, prepare their report.** Said board of commissioners shall report to the board of supervisors the number of days each had been employed and the actual expenses incurred. Each commissioner shall be paid five dollars per day for his services, and necessary expenses in addition thereto.

Sec. 12508 (10918). Property owners to be notified of commissioners' report by publication—publication, how made.

Sec. 12509 (10919). Exceptions, how heard and determined.—The levee district or **any owner of land or other property in said district, may file exceptions to said report or to any assessment for either benefits or damages,** within ten days after the last day of publication of the notice provided for in the preceding section. **All exceptions shall be heard by the court and determined in a summary manner** so as to carry out liberally the purposes and needs of

the district, and **if it appears to have the satisfaction of the court,** after having heard and determined all of said exceptions, **that the estimated cost of constructing the improvement contemplated in "the plan for reclamation", is less than the benefits assessed against the land and other property in said district, then the court shall approve and confirm said commissioners' report as so modified and amended.** The court shall adjudge and apportion the costs incurred by the exceptions filed **and shall condemn any land or other property,** within or without the boundary lines of the district, **that is shown by the report of the commissioners to be needed for rights-of-way, holding basins and other works, or that may be needed for material** to be used in constructing said works, following, as nearly as possible the procedure that is now provided for by law for the appropriation of land and other property taken for telegraph, telephone and railroad rights-of-way. **The clerk of said circuit court shall transmit a certified copy of the court decree and copy of the commissioners' report, as confirmed or amended by the court, to the secretary of the board of supervisors of the district, who shall make and transmit a certified copy of the said decree and that part of the said report affecting land in each county to the recorder of each county having lands in the district, or affected by the said report, where the same shall become a permanent record** and each such recorder shall receive a fee of one dollar ($1.00) for receiving, filing and preserving the same. **Any person may appeal from the judgment of the court, and upon such appeal there may be determined either or both of the following questions: First, whether just compensation has been allowed for property appropriated; and, second, whether proper damages have been allowed for property prejudicially affected by the improvements.**

Sec. 12510 (10920). Board of supervisors to construct

works and improvements—contracts, how let—duties of chief engineer.

Sec. 12511 (10921). Board of supervisors to levy tax—duties of secretary of board:—After the lists of land and other property, with the assessed benefits and the decree and judgment of court, have been filed in the office of the county recorder as provided in section 12509 of this article, then the board of supervisors shall without any unnecessary delay, levy a tax of such portion of said benefits on all lands, railroad and other property in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the cost of the completion of the proposed works and improvements as shown in said "plan for reclamation", and in carrying out the objects of said district, and plus ten per cent of said total amount for emergencies. The said tax shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as provided herein and hereafter, then the amount of the interest (as estimated by said board of supervisors) which will accrue on such bonds shall be included and added to the said tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the costs of construction in determining whether or not the expenses and costs of making said improvements are or are not equal to or in excess of the benefits assessed. The secretary of the board of supervisors, as soon as said total tax is levied, shall, at the expense of the district, prepare a list of all taxes levied, in the form of a well-bound book, which book shall be indorsed and named "levee tax record of ..... levee district .....", which indorsement shall also be printed or written at the top of each page in said book, and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of

the district, and the same shall thereafter become a permanent record in the office of said secretary.

Sec. 12512 (10922). Board of supervisors to levy annual installment tax—form of certificate of tax.—The said board of supervisors shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied under the preceding section, which shall become due and be collected during said year at the same time that state and county taxes are due and collected, **which said annual installment and levy shall be evidenced and certified by the said board** not later than September 1st of each year **to the collector of revenue of each county** in which lands and other property of said district are situate. The certificate of said installment tax shall be in substantially the following form:

(Here form is set out.)

Then shall follow a table of schedules showing in properly ruled columns, first, the names of the owners of said lands and other property as they appeared in the decree of the circuit court organizing said district; second, the descriptions of the said lands and other property opposite the names of said owners; third, the amount of said annual installment tax levied on each tract of land or piece of property; fourth, the amount of maintenance tax; fifth, a blank column in which the collector shall record the several amounts as collected by him; sixth, a blank column in which the collector shall record the date of payment of the different sums; seventh, a blank column in which the collector shall record the names of the person or persons paying the several amounts. The columns in which the annual installment tax and the maintenance tax, if any, appear shall be correctly totaled and the total amount shall correspond to the amount set out in the above mentioned certificate. **The said certificate and table shall be prepared in**

the form of a well-bound book which shall be indorsed and named "levee tax book ..... levee district ..... county, Missouri, for the year 19...", which indorsement shall also be printed at the top of each page in said book.

Sec. 12513 (10923). Collector of revenue to collect levee tax—to give bond to board of supervisors.

Sec. 12514 (10924). Levee tax delinquent, when—penalty.

Sec. 12515 (10925). Penalty for failure of collector to pay over tax.

Sec. 12516 (10926). Levee tax to constitute a lien—how evidenced.—All levee taxes provided for in this article, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee, to be fixed by the court and taxed as costs in the action brought to enforce payment, **shall, from date of filing the certificate hereinafter described in the office of the recorder of deeds for the county wherein the lands and properties are situate, until paid, constitute a lien, to which only the lien of the state for general state, county, school and road taxes shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in this article. Such lien shall be evidenced by a certificate substantially in the following form,** to-wit:

(Here form is set out.)

The certificates and table specified in this section shall be prepared in a well-bound book and filed in the office of each of the recorders of the counties having lands in said districts as the same may affect the land or other property in his county, where the same shall become a permanent record of the office. The said book or books shall be prepared by the secretary of the board of supervisors at the expense

of the levee district, **shall be designated as the "levee tax record"**, and each recorder shall receive a fee of one dollar ($1.00) for filing said book and preserving the same.

Sec. 12517 (10927). Tax book to be prima facie evidence—suits for taxes, how brought.—The "levee tax book" of the district, as returned by the collector of the revenue to the secretary of the board of supervisors of the levee district shall be prima facie evidence in all courts of all matters therein contained. **The liens established and declared in the preceding sections may and shall be enforced by an action on delinquent tax bills, made and certified by the county collector, which action shall be instituted in the circuit court without regard to the amount of the claim within six months after December 31st of the year for which said taxes were levied. The suits shall be brought in the corporate name of the district by its attorney against the land or lands, property or properties, on which such levee tax has not been paid.** The suit shall be brought in the county in which the property is situate, except when the tract or property sued upon be in more than one county, in which event the suit may be brought on the whole tract, parcel or property in any county in which any portion thereof may be situate. **The pleadings, process, proceedings, practice and sales, in cases arising under this article shall, except as herein provided, be the same and have the same effect as in an action for an enforcement of the state's lien for the delinquent general taxes upon real estate,** and the aforesaid "levee tax book" shall have the same probative effect as the back tax bill has in actions for the enforcement of the state's lien for general taxes upon real estate. The title acquired through any sale of lands or other property under the aforesaid proceedings shall be subject to the lien of all subsequent annual installments of levee tax. In all suits for the collection of delinquent taxes, the judgment for said delinquent taxes and penalty shall

also include all costs of suit and a reasonable attorney's fee to be fixed by the court, recoverable the same as the delinquent tax and in the same suit. The proceeds of sales made under and by virtue of this article shall be paid at once to the aforesaid treasurer and shall be accounted for by him the same as the levee taxes.

Sec. 12518 (10928). Secretary of board to be ex officio treasurer—salary—duties of—board to audit books annually and publish financial statement.

Sec. 12519 (10929). Supervisors—powers and duties.—In order to effect the leveeing, protection and reclamation of the land and other property in the district subject to tax, the board of supervisors is authorized and empowered to straighten, widen, change the course and line of any levee in and out of said district; to fill up any creek, drain, channel, river, watercourse or natural stream; and to divert or divide the flow of water in or out of said district; to construct and maintain sewers, levees, dikes, dams, sluices, revetments, drainage ditches, pumping stations, syphons and any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; to construct roadways over levees and embankments; to construct any and all of said works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut in or out of said district; to remove any fence, building or other improvements in or out of said district, **and shall have the right to hold, control and acquire by donation or purchase, and if need be, condemn any land, easement, railroad or other right-of-way, sluice or franchise in or out of said district for right-of-way, or for any of the purposes herein provided, or for material to be used in constructing and maintaining said works and improvements for leveeing, protecting and reclaiming the lands in said district.** Said board shall also have the right to condemn for the use of the district, any

land or property within or without said district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages and shall follow the procedure that is not provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights of way.

Sec. 12520 (10930). Board of supervisors to employ attorney—duties.—The board of supervisors shall employ an attorney to act for the district and to advise said board. Such employment shall be evidenced by an agreement in writing, which, as far as possible, shall specify the exact amount to be paid to said attorney for all services and expenses. Such attorney shall conduct all legal proceedings and suit in court where the district is a party or interested, and shall in legal matters advise the said board of supervisors, all officers, employees or agents of said district and board, and generally look after and attend to all matters of a legal nature for said board and district. When the said board may deem it necessary, they may, by and with the advice of said attorney, and under the like terms and conditions as above set forth, employ another attorney or attorneys (R. S. 1929, Sec. 10930).

Sec. 12521 (10931). Board to keep record of proceedings—open to inspection. The board of supervisors of any district organized under this article shall cause to be kept a well-bound book, entitled "Record of board of supervisors of ..... district", in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all corporate acts, which record or records shall at all times be open to the inspection of anyone interested, whether taxpayer or bondholder.

Sec. 12522 (10932). Damages assessed must be paid before appropriating land.

Sec. 12523 (10933). Embankments on right-of-way to be raised at expense of owner to conform to district levee.

Sec. 12524 (10934). Unpaid warrants to draw interest.

Sec. 12525 (10935). Bonds payable to district.

Sec. 12526 (10936). Change of venue.

Sec. 12527 (10937). Action not to abate by reason of death of party.

Sec. 12528 (10938). Appeals.—No appeal from any action of the circuit court had under this article shall be permitted to act as supersedeas or to delay any action of the prosecution of any proceedings or work begun under the provisions of this law. **Any procedure had under sections 12496, 12509, 12532, or 12543 of this article may be heard and determined by the court at either regular, adjourned or special sessions.**

Sec. 12529 (10939). Court to declare corporation dissolved, when.

Sec. 12530 (10940). Board to provide for compensation of employees and fees of officers.

Sec. 12531 (10941). Who are owners.

Sec. 12532 (10942). Plan of drainage may be changed, how. Note: **this Section is set out in full,** supra.

Sec. 12533 (10943). Board to appoint inspectors—duties and powers of inspectors.

Sec. 12534 (10944). Board of supervisors may issue bonds—how paid—funds, how to be used.—The board of supervisors may, if in their judgment it seems best, issue bonds not to exceed ninety-one per cent of the total amount of the taxes levied under the provisions of section 12511 of this article, in denomination of not less than one hundred dollars, bearing interest from date at a rate not to exceed six per cent per annum, payable semi-annually, to mature at annual intervals within twenty years, commencing after a period of years not later than five years, to be determined by the board of supervisors, both principal and

interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the president of the board of supervisors, attested with the seal of said district and by the signature of the secretary of the said board. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of supervisors may deem necessary to meet the payments for the works and improvements in the district. Said bonds shall not be sold for less than ninety-five cents on the dollar, with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the aforesaid taxes. A sufficient amount of the levee tax shall be appropriated by the board of supervisors for the purpose of paying the principal and interest of the said bonds and the same shall, when collected, be preserved in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the rate of six per centum per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment. Any expenses incurred in paying said bonds and interest thereon and a reasonable compensation to the bank or trust company for paying same, shall be paid out of the other funds in the hands of the treasurer and collected for the purpose of meeting the expenses of administration. It shall be the duty of said board of supervisors in making the annual tax levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provisions in advance for the payment thereof. In case the proceeds of the original tax levy made under the provisions of section 12511 of this article are not sufficient to pay the principal and interest of all bonds issued, then the board of supervisors shall make such additional levy or levies as are necessary for

this purpose, and under no circumstances shall any tax levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same. Said treasurer shall, at the time of the receipt by him of said bonds, execute and deliver to the president of the board of supervisors of the said district, a bond with good and sufficient sureties, to be approved by the said board of supervisors conditioned that he shall account for and pay over as required by law and as ordered to do by said board of supervisors any and all money received by him on the sale of such bonds, or any of them, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof and according to the terms herein prescribed, and that he will return, duly canceled, any and all bonds not sold to the board of supervisors, when ordered by said board so to do, which said bond shall remain in the custody of the said president of said board of supervisors, who shall produce the same for inspection or for use as evidenced whenever and wherever legally requested so to do. The said treasurer shall promptly report all sales of bonds to the board of supervisors, and the board shall at the proper time, issue warrants for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold and a reasonable compensation to the bank or trust company, and the said treasurer shall place sufficient funds at the place of payment to pay the same. In case proper warrants are not issued by the board of supervisors as herein provided then the treasurer shall of his own accord place said funds at the place of payment and the canceled bonds and coupons and the receipt of the bank or trust company shall be accepted in lieu of warrants. The successor in office of any such treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office: **Provided,**

if it should be deemed more expedient to the board of supervisors, as to moneys derived from the sale of bonds issued, said board may by resolution, select some suitable bank or banks or other depository, as temporary treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of supervisors. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the levee works and improvements and such costs, expenses, fees and salaries as may be authorized by law and used for no other purpose.

Sec. 12535 (10945). Board of supervisors may levy maintenance tax.—To maintain and preserve the levees or other improvements made pursuant to this article and to strengthen, repair, replace and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of supervisors may, upon the completion of said improvements and on or before the first day of September in each year thereafter, **levy an assessment upon each tract or parcel of land and upon corporate property within the district, to be known as a "maintenance tax". Said maintenance tax shall be apportioned upon the basis of the net assessment of benefits accruing for original construction, shall not exceed ten per cent thereof in any one year** and shall be certified to the collector of the revenue of each county in which lands of said district are situate in the same book in like manner and at the same time as the annual tax is certified, but in a separate column, under the heading "maintenance tax". Said collector shall demand and collect the maintenance tax and make return thereof and shall receive the same compensation therefor and be liable for the same penalties for failure or neglect so to do as is provided herein for the annual installment tax.

Sec. 12536 (10946). Adjacent districts, how consolidated.

Sec. 12537 (10947). Time of corporate existence, how extended.

Sec. 12538 (10948). Board may make additional levy of tax, when and for what purposes.—Where the works set out in the "plan for reclamation" of any levee district is insufficient to reclaim in whole or in part any or all of the land and other property of the district the board of supervisors shall have the right to formulate new or amended plans containing new levees or other works, or providing for the enlargement of existing levees or other works, and additional assessments may be made in conformity with the provisions of section 12511, the same to be made in proportion to the increased benefits accruing to the lands and other property because of the additional works. **If it should be found at any time that the amount of total tax levied under the provisions of section 12511 is insufficient to pay cost of works set out in "the plan for reclamation" or additional work done under the provisions of this section, the board of supervisors may make an additional levy** to provide funds to complete the work; **Provided, the total of all levies of such tax does not exceed the total amount of benefits assessed.**

Sec. 12539 (10949). Secretary of board to extend and certify drainage tax to township collectors—duties of collectors—delinquent levee tax, how collected.

Sec. 12540 (10950). Districts may reorganize under this article.

Sec. 12541 (10951). Districts reorganized under this law to receive all benefits—reorganization article of association to contain what.

Sec. 12542 (10952). Notice of reorganization hearing.

Sec. 12543 (10953). Procedure.—After said notice has been so given the matter shall be proceeded with in the

same manner as is provided for where articles of association for the formation of a levee district shall have been filed.

Sec. 12544 (10954). County clerk and treasurer to deliver records and moneys of district to secretary of board.

Sec. 12545 (10955). Liability of reorganized district.

Sec. 12546 (10956). Article, how construed—existing rights not to be affected by this article.

Sec. 12547 (10957). Procedure in dissolving levee district.